

Guideline # 11

Determining Job Rate

PAY EQUITY IMPLEMENTATION SERIES

The *Pay Equity Implementation Series* is designed to help employers, employees and bargaining agents to achieve pay equity and to understand their rights and obligations under the *Pay Equity Act, R.S.O. 1990, c. P7*, as amended (the *Act*). These guidelines do not restrict review officers of the Commission or the Pay Equity Hearings Tribunal in their interpretation of the *Act*. The series is published in a sequence that generally reflects the steps for implementing pay equity. (**Revised Summer 2002**).

SIGNIFICANCE

Pay equity is achieved when the **job rate** for a female job class:

- is at least the same as the job rate for its male comparator job class using the job-to-job comparison method; or
- bears the same relationship between job value and job rate as that for the representative group of male job classes using the proportional value method. Details on how to apply proportional value are available in the Commission publication *Step by Step to Pay Equity: Using the Proportional Value Comparison Method*.

Job rate is defined as the highest rate of compensation for a job class. Compensation includes all payments and benefits paid to an employee who performs functions which entitle that individual to be paid a fixed or ascertainable amount. When comparing job rates, consider all forms of compensation.

Normally the job rate for a job class will be the highest actual rate paid to an incumbent in the job class, but there are some exceptions. For example, a newly hired employee in a single incumbent job class is likely to be paid a start rate rather than job rate; in this case, it is necessary to determine what that job rate would realistically be. Similarly, a job rate exists for a job class, even if that job class is temporarily vacant.

EXPLANATION

In the Ontario Northland decision, the Pay Equity Hearings Tribunal set out three principles for determining job rate:

- The calculations must be as accurate as possible, based on realistic and fair compensation calculations.
- The job rate should be calculated in a manner which is the least disruptive to the collective agreement and compensation practices of the parties.
- All calculations must conform to the purpose and scheme of the *Act*.

Bringing Job Rates to a Common Standard

When comparing classes where the practice is to pay both jobs on a weekly or monthly basis, for example, this practice can be continued and the compensation for the job classes can be compared without change. This may apply even if the average hours worked per week are different for the job classes being compared.

However, when comparing job classes paid using a different standard such as hourly versus weekly salary, or weekly versus annual salary, the rates must be brought to one common measurement standard to compare compensation. A common standard used is dollars per hour. If a longer period than an hour is used to express the value of pay or a benefit, simply divide the longer period by the number of hours worked. For example, if an employee works 40 hours per week and is paid \$29,000 per year, the hourly rate is calculated as follows:

$$\text{number of hours worked per year} = 40 \times 52 = 2080 \text{ hourly pay} = \$29,000 / 2,080 = \$13.94$$

If it is unclear how many hours are worked in a day, move to a longer period, such as a week or year for both job classes under comparison. For example, if daily hours are not clear or vary for one of the job classes, and pay is stated by policy or collective agreement in weekly terms, move the value of pay and benefits for both job classes to a weekly basis.

Calculating Salaries, Wages and Payments

Calculating the job rate for a job class depends on the compensation system the employer uses to set the pay. The following are commonly used methods for determining how pay levels are applied to jobs.

1. No formal system for determining pay

If there is no pay administration system in place, the maximum rate paid to any incumbent of a job class is usually considered to be the job rate for that job class. There may be exceptions, however. If, as a result of turn-over and new hires, an incumbent is making less than the previous maximum rate, the employer must determine the highest rate which would be available to a job class at any given time. For example, an employer identifying a wage gap on January 1, 1993, sees the highest rate paid to an incumbent in a job class under consideration is \$10.00 per hour. However, that incumbent has been in the job for only 2 months. It is necessary to determine the highest rate paid to that job class over a longer period of time, perhaps one or two years. If the previous employee had earned \$12.00 per hour, and there were no general increases or clawbacks since that time, \$12.00 would be deemed the job rate.

2. Single rate of pay

In a single rate of pay structure, a rate of pay is specified for a job class and an employee's pay does not vary from that rate for any reason. In this case, the job rate is the single rate of pay.

3. Predefined salary or wage ranges

Many employers maintain a definite salary or wage range with a minimum and a maximum for some or all of their job classes. The maximum of the range is the job rate, provided that the maximum can be demonstrated to be attainable (this does not mean that employees have to be at the stated maximum). Typically, the maximum is achieved based on length of service, merit provisions, or some combination of the two.

Pay ranges for different job classes in the same establishment may differ in width and/or number of steps. In these cases, it is the differences between the job rate or maximum for female job classes and that for their comparators which are used to calculate the pay gap. Care is required in comparing job classes with different pay bands. The Pay Equity

Hearings Tribunal has considered the intent of the *Act* on this issue, and commented in Gloucester (No. 2) (1991) 2 P.E.R. that "...it would be inappropriate for employees in female job classes to take twice as long [as employees in the male comparator job class] to get the job rate."

Regardless of the compensation system in place, job rate is the top rate available to a job class. Any differences in compensation to be corrected under the *Pay Equity Act* are the amounts by which job rates for male job classes exceeded the job rates for the female job classes for which they were comparators. Circumstances under which some part of the wage gap need not be incorporated into a wage adjustment are discussed in Guideline #12 – Permissible Differences in Compensation.

Commissions, Bonuses, Tips and Other Incentive Pay

Payments that are based on work performance or output must be included as part of job rate, even where the calculation is difficult. Sales commissions, bonuses, tips and other kinds of incentive pay are included in this category. Frequently, these payments are paid in addition to a base wage or salary. In some cases, they are the only pay received.

To ascertain the portion of job rate expressed as incentive pay, it may be necessary to identify how much an employee can realistically earn. For example, sales forecasts and past sales performance will provide information on what level of sales can be expected of employees. Applying commission structure to these numbers can tell you what level of payments contribute to job rate for these positions. For example, an employer may pay a minimum regular salary to servers in a restaurant with the expectation that tips will provide most of the servers' incomes. In this case, since all of the servers can expect a significant part of their pay to come from tips, at least some portion of the tips will have to be counted into the job rate because that portion of the tips is a part of their normal pay. This is particularly obvious where tips are pooled for distribution.

In another example, an employer may pay a bonus to the salesperson with the highest sales each month. If it could be shown that the bonus is awarded on sales achieved as a measure of merit and not on a rotating basis, the bonus could likely be omitted from the job rate. The variety of payment plans included in this category makes it impossible to cover every situation in this guideline. When costing these cash payments, use consistent procedures to convert them to an hourly or common rate.

Calculating Benefits

The *Act* does not specifically define benefits which are part of compensation. Benefits are something "paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount." If a benefit's value can be determined, it must be considered for pay equity purposes. A benefit is a component of job rate if it contributes to the total compensation of a job class or provides an advantage to that job class over others that do not have the same benefit.

It is the availability of benefits, not their use by individuals, that must be considered. If a benefit is available to employees in a job class who can freely choose whether to use it or not, that benefit is generally included in the job rate for that job class.

Different benefits may be available to different job classes as a result of:

- Job classes belonging to different employee groups, for example, union vs. non-union employees, management vs. non-management or executives, job classes covered by different bargaining units with different collective agreements;

- Job classes with different employment status or appointment type. Employees working less than full-time, on a contract basis, or on a casual or contingent basis may work in job classes which do not have access to full benefits.

Determining the Value of Benefits

In practice, if benefits are basically the same between two job classes, it is unlikely that costing will be necessary. For a benefit to be identical, however, access to it has to be equal.

Comparing the compensation of one job class to that of another with different benefits requires determining the value of their respective benefits.

Benefits may differ between two job classes because:

- One job class has the benefit(s) and the other does not.
- Both job classes have the benefit(s) but with different levels of payment or advantage.
- The difference is linked to the difference in pay.

In the first two cases, adjustments are required. In the third case, adjusting the salary or wages portion of the total compensation will adjust the benefit.

Many employers in implementing pay equity have simply granted the additional benefit to the job class that does not have it. If so, there is no need to calculate the benefit's value to compare the two job classes. This practice must be negotiated with the bargaining agent in a union workplace.

When using the proportional value comparison method, the benefit levels of the representative group of male job classes and the relevant female job classes must be considered.

In a workplace where many job classes have a number of different benefit packages and a large number of comparisons are needed, the most efficient approach is to calculate and add the value of each benefit package to the salary and wage component of the job rate. For example, with the proportional value comparison method, this approach might be used with male job classes that have different benefit plans when calculating the male job rate line. In a workplace with few job classes and benefit packages, determine whether benefits differ when each comparison is made and simply make adjustments as needed.

If employees have to qualify for a benefit, for example, by having to work for a certain length of time to get increased vacation, they are still considered to have access to that benefit. However, where the qualification is different between two job classes for the same benefit, for example, two years in one job class and five years in another to get the same vacation, an adjustment will have to be made. The Hearings Tribunal decided in the Lady Dunn General Hospital and Regional Municipality of Peel cases that the qualification periods had to be adjusted in such circumstances to make access equal.

When a benefit is based on a percentage of pay, the percentage should be compared to determine relative value. If the percentage is made equal, when the pay rate for the female job class is made equal to the male comparator job class, the value of the benefit will be the same. When a benefit is based on a dollar value, the benefit must be calculated in dollars.

Reasonable attempts must be made to incorporate the value of benefits which are not time related (such as dental plans) into job rate, but not by reducing them to separate hourly values for each job class. For example, if dental plan premiums cost an employer \$200.00 per year for each employee enrolled, and coverage is open to full time and part time employees, prorating the cost to hours worked would suggest that the benefit is of greater

value to part-time than full-time employees. Thus, another meaningful measure, such as average hourly value to all eligible employees, must be determined.

RELEVANT SECTIONS IN THE ACT

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| Subsection 1(1) | Defines job rate and compensation. |
| Subsections 6(l)-(5) | Defines when pay equity is achieved and which job rates can be compared under the job-to-job comparison method. |
| Subsection 6(9) | Defines job rate when using the group-of-jobs approach. |
| Subsection 8(1) | Defines when differences in job rates are permissible (seniority, merit, etc.). |
| Subsection 13(3) | States that the job classes with the lowest job rates must receive the largest adjustments. |

REFERENCES:

- Pay Equity Implementation Series (Revised) - Guideline #5: Determining Job Class*
- Pay Equity Implementation Series (Revised) - Guideline #10: Which Job Classes to Compare*
- Pay Equity Implementation Series (Revised) - Guideline #12: Permissible Differences in Compensation*
- Pay Equity Implementation Series (Revised) - Guideline #13: Pay Equity Adjustments*
- Lady Dunn General Hospital (1991), 2 P.E.R. 168*
- Ontario Northland (1992), 3 P.E.R. 166*
- Regional Municipality of Peel (1992), 3 P.E.R. 191*
- Welland County General Hospital (1994) 5 P.E.R. 12*
- York Region Board of Education (Teachers) (N0.4) (1995) 6 P.E.R. 1*
- Step by Step to Pay Equity Volume 3 - Using the Proportional Value Comparison Method, Pay Equity Commission, 1993*

For More Information:

We are here to help. We can answer your questions by e-mail at <mailto:Pecinfo.Pecinfo@ontario.ca> or by phone at (416) 314-1896, or toll-free at 1-800-387-8813. You can also register for a free seminar. Visit our website at <http://www.payequity.gov.on.ca/peo/english/seminar.html>

All communications are confidential.

The Pay Equity Commission

This fact sheet is for information only, and is not intended to restrict Review Officers or the Pay Equity Hearings Tribunal in their determination of matters. Refer to the *Pay Equity Act* for exact interpretation.

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